



State of Wisconsin \ Department of Commerce

HEARING DRAFT OF PROPOSED RULES

Rule No.: *Chapter Comm 48*

Relating to: *Petroleum Products*

SECTION 1. Comm 48.01 is renumbered Comm 48.100, and Comm 48.100 (title), (4), (5), and (7) (intro) and (c) (intro.) and 5., as renumbered, are amended to read:

Comm 48.100 (title) ~~Power~~ Scope, application and authority.

(4) **AUTHORITY FOR ACCESS TO RECORDS.** The department has the authority to inspect the records of every person having custody of books or records showing the shipment, ~~or receipt, and inventory~~ of products of petroleum for the purpose of determining the amount of petroleum products shipped or received.

(5) **AUTHORITY TO PERFORM INVESTIGATIONS.** Any accident or explosion involving products of petroleum which come to the knowledge of the department ~~shall~~ may be investigated by the department to determine whether or not there has been a violation of ~~these rules~~ this chapter.

(7) (intro.) **AUTHORITY TO STOP SALE.** Persons with enforcement authority under this chapter shall have the authority to shut down petroleum storage tank systems by the issuance of orders, ~~and the disabling with locks, or applying a red-tag,~~ under the following conditions:

~~(e)~~ (d) (intro.) *Shutdown after long-term violation.* Petroleum storage systems containing petroleum products for which there is a continuing code violation under this chapter are subject to shutdown if all of the following conditions are met:

5. The owner has not filed a written appeal with the department within 15 calendar days of receiving the order.

SECTION 2. Comm 48.100 (7) (c) is created to read:

Comm 48.100 (7) (c) *Immediate shutdown after a prohibited act.* Petroleum storage systems are subject to immediate shutdown after any corresponding violation of s. Comm 48.590 (1) or (2) occurs.

SECTION 3. Comm 48.02 is renumbered Comm 48.200, and Comm 48.200 (5) Note (2), as renumbered, is amended to read:

Comm 48.200 (5) Note: Form ERS-9890A is available ~~at no charge~~ from the ~~department at the Division of Environmental and Regulatory Services Division,~~ at P.O. Box 7839, Madison, WI 53707-7839, ~~or at~~ telephone 608/266-7874 and 608/264-8777 (TTY), or ~~on the Internet at www.commerce.state.wi.us/ER/ER-BST-FM-Comm10Forms.html~~ at the Division's Web sites for petroleum and tanks at commerce.wi.gov.

SECTION 4. Comm 48.03 is renumbered Comm 48.300, and Comm 48.300 (1) (a), as renumbered, is amended to read:

Comm 48.300 (1) (a) Methanol, denatured ethanol, and other ~~alcohols~~ alcohol;

SECTION 5. Comm 48.300 (1) (c), as renumbered, is repealed.

SECTION 6. Comm 48.300 (1) (d) and (e), as renumbered, are renumbered Comm 48.300 (1) (c) and (d), and Comm 48.300 (1) (c), as renumbered, is amended to read:

Comm 48.300 (1) (c) ~~Liquefied petroleum gas~~ Biofuels; and

SECTION 7. Comm 48.300 (3) to (7), as renumbered, are renumbered Comm 48.300 (4), (6), (8), (9), and (11).

SECTION 8. Comm 48.300 (3), (5), and (7) are created to read:

Comm 48.300 (3) “Biofuels” means any fuel that is derived from biomass.

(5) “Inspection” means collection of product samples, qualitative determination by visual assessment and laboratory testing, and verification of associated product-shipping and storage records.

(7) “Motor Fuel” means a flammable or combustible liquid which is used in the operation of an internal combustion or turbine engine and which is regulated by either the product specifications in subch. II or the labeling requirements in s. Comm 48.580.

SECTION 9. Comm 48.300 (8), as renumbered, is amended to read:

Comm 48.300 (8) “Petroleum products,” “products of petroleum” and “products” means gasoline, gasoline/alcohol-ether blends, aviation gasoline, automotive gasoline, kerosene, fuel oil, burner fuel-oil and diesel fuel oil.

SECTION 10. Comm 48.300 (10) is created to read:

Comm 48.300 (10) “Red-tag” means a red tag secured to a component of a storage or dispensing system, which gives notice that the system or the product stored is under enforcement action for failure to comply with the requirements of either this chapter or ch. Comm 10, and which prohibits operation of the system until the tag is removed by an inspector.

SECTION 11. Comm 48.035 is repealed and recreated to read:

Comm 48.400 Adoption of standards by reference. (1) The following standards of ASTM International are hereby incorporated by reference into this chapter:

- (a) ASTM D 396–04, Standard Specification for Fuel Oils.
- (b) ASTM D 910–04a, Standard Specification for Aviation Gasolines.
- (c) ASTM D 975–03, Standard Specification for Diesel Fuel Oils.
- (d) ASTM D 1655-04a, Standard Specification for Aviation Turbine Fuels.
- (e) ASTM D 3699–04, Standard Specification for Kerosine.
- (f) ASTM D 4806-04a, Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel.
- (g) ASTM D 4814–04b, Standard Specification for Automotive Spark-Ignition Engine Fuel.
- (h) ASTM D 5798–99(2004), Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines.
- (i) ASTM D 6227–04a, Standard Specification for Grade 82 Unleaded Aviation Gasoline.
- (j) ASTM D 6751–03a, Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.
- (2) Where no ASTM standard exists, other generally recognized national consensus standards may be used.

Note: Copies of the adopted standards are on file in the offices of the department, the secretary of state and the revisor of statutes. Copies of the standards may be purchased from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959, telephone (610) 832–9585, e-mail service@astm.org, or Web site www.astm.org.

Note: Pursuant to s. 168.07 (2), Stats., inspections to determine compliance with specifications prescribed by the department must be conducted in accordance with the latest ASTM methods.

SECTION 12. Comm 48.04 is renumbered Comm 48.500, and Comm 48.500 (1) (title) and (a), and Table 48.500 footnote a, as renumbered, are amended to read:

Comm 48.500 (1) (title) GASOLINE, AUTOMOTIVE GASOLINE, ALCOHOL, AND GASOLINE/ALCOHOL-ETHER BLENDS.

(a) *Gasoline.* Any petroleum product designated by name or reference as gasoline shall meet the requirements of Table ~~48.04–A~~ 48.500.

Table 48.500 footnote a. Pursuant to s. 168.07, Stats., the latest revision of the ASTM Annual Book of ASTM Standards ~~of the American Society for Testing and Materials~~ shall be used.

SECTION 13. Comm 48.500 (1) (d) and (e), as renumbered, are renumbered Comm 48.500 (1) (e) and (f).

SECTION 14. Comm 48.500 (1) (d) is created to read:

Comm 48.500 (1) (d) *Ethanol*. 1. Any product designated by name or reference as denatured fuel ethanol for blending with gasoline for use as automotive spark-ignition engine fuel shall meet the requirements of ASTM D 4806.

2. Any product designated by name or reference as fuel ethanol for automotive spark-ignition engines shall meet the requirements of ASTM D 5798.

SECTION 15. Comm 48.500 (2), as renumbered, is amended to read:

Comm 48.500 (2) AVIATION GASOLINE FUELS. (a) *Aviation gasoline*. Any petroleum product designated by name or reference as aviation gasoline shall meet the requirements of ASTM D 910 or D 6227.

(b) *Aviation turbine fuel*. Any petroleum product designated by name or reference as aviation turbine fuel shall meet the requirements of ASTM D 1655.

SECTION 16. Comm 48.05 to Comm 48.07 are renumbered Comm 48.510, Comm 48.520, and Comm 48.530.

SECTION 17. Comm 48.10 is renumbered Comm 48.580, and Comm 48.580 (1) (b) 9., (2), and (3) (a), as renumbered, are amended to read:

Comm 48.580 (1) (b) 9. If a dispenser remains unlabeled after the expiration of orders issued by the department for labeling, and the owner does not file a written appeal within 15 calendar days of receiving the order, the department shall stop the sale of the product in accordance with s. Comm ~~48.04~~ 48.100 (7).

(2) STORAGE CONTAINERS. (a) *Gasoline and similar products*. All containers for storing gasoline or any other product that has a flash point of less than 100°F when tested using either an ASTM D 56 or ASTM D 6450 closed tester shall be metal or materials equally sound nonflammable material meeting the standards approved by the department requirements of ch. Comm 10 or 14, and all containers shall be have the common name of the contents clearly labeled or painted on the exterior, and colored shall be substantially a bright red color. These requirements do not apply to any of the following:

~~(a) Exception No. 1.~~ 1. Fuel supply tanks connected to internal combustion or turbine engines, appliances or any device consuming the fuel.

~~(b) Exception No. 2.~~ 2. Any container holding one gallon or less of a petroleum product, which was filled originally by a manufacturer or a packager, and which complies with the federal standards for packaging and labeling.

~~(c) Exception No. 3. Kerosene, diesel fuel, burner fuel oils and similar products of petroleum with a flash point of 100°F (38°C) or greater shall not be stored in any container colored red.~~ 3. Containers having a capacity of 275 gallons or more.

Note: Chapter Comm 14 generally regulates aboveground storage of flammable and combustible liquids in containers having a capacity of 110 gallons or less, while ch. Comm 10 regulates this storage in containers that have more than that capacity. Both of those codes reference national standards that specify the materials which these containers must be constructed of – such as ASTM F 852, which addresses portable gasoline containers for consumer use.

~~(d) (b) Exception No. 4. Containers having a capacity of 275 gallons or more. Flash points of 100 °F or greater. Kerosene, diesel fuel, burner fuel oils and similar products of petroleum with a flash point of 100°F or greater when tested as stated in par. (a) may not be stored in any container which is in any manner colored red.~~

~~(3) (a) General. Any person receiving, unloading, using, offering for sale or selling any petroleum product shall identify the product as to name or grade. A person may not deliberately deliver, unload or drop any dissimilar fuels, dissimilar octane or dissimilar grade of petroleum products into tank storage that would allow fraudulent fuel sales.~~

SECTION 18. Comm 48.590 is created to read:

Comm 48.590 Prohibited Acts. (1) No person may deliberately deliver, unload, direct or transfer a lower grade of a petroleum product into a storage tank system labeled as containing a higher grade of petroleum product unless specifically approved in writing by an inspector.

(2) Except as authorized under sub. (1), no person may deliberately deliver, unload, direct or transfer dissimilar fuels, dissimilar octane or a dissimilar grade of petroleum products into a storage tank unless specifically approved in writing by an inspector.

(3) No person may hinder, divert or obstruct inspectors in the performance of their duties under the authority of this chapter.

(4) No person may represent a motor fuel or petroleum product in any manner that is contrary to the provisions and the adopted standards of this chapter, and the provisions of ch. 168, Stats.

(5) No person may deliver, place, receive or store in any portable container any product that has a flash point of less than 100°F when tested using either an ASTM D 56 or ASTM D 6450 closed tester, unless the container complies with s. Comm 48.580 (2) (a).

(6) No person may deliver, place, receive or store any kerosene, diesel fuel or burner oil, or a like product of petroleum that has a flash point of 100°F or more when tested using either an ASTM D 56 or ASTM D 6450 closed tester, in any portable container which is in any manner colored red.

SECTION 19. Comm 48.09 is renumbered Comm 48.600, and Comm 48.600 (1) (intro) and (a), as renumbered, are renumbered Comm 48.600 (1) (a) and (b).

SECTION 20. Comm 48.600 (1) (b) 3. is created to read:

Comm 48.600 (1) (b) 3. Specialty motor fuels and petroleum products that will not be introduced into the wholesale or retail market stream.

SECTION 21. Comm 48.600 (2) (c) and (d), and (3) (intro.), (a) (intro.) and 1., and (b), as renumbered, are amended to read:

Comm 48.600 (2) (c) If no sample is taken by an inspector within the time limit specified, the receiver or commingler shall take a true representative sample ~~of not less than 8 ounces~~ in accordance with the procedures ~~per~~ in sub. (3) ~~(b)~~ (c).

~~(d) After proper notification, the department shall take a sample of the petroleum product in accordance with the following schedule:~~

Time of notification by recipient	Time of sampling by department
Before 11:45 a.m.	11:45 a.m.—4:30 p.m. of same day
11:45 a.m.—4:30 p.m.	Before 11:45 a.m. of following day

For the purpose of this section, the department shall have discretion in determining a reasonable length of time in which an inspector may take the sample.

(3) ~~(intro.)~~ (a) A true representative sample of at least 8 ounces shall be taken from every shipment of petroleum products, including commingled products, imported into and received in this state.

(3) ~~(a)~~ (b) *Department procedures.* ~~(intro.)~~ 1. The department shall inspect each sample of petroleum product and perform the tests, deemed necessary, in accordance with the specifications as outlined in this code.

~~1. The department shall issue an inspection certificate if the petroleum product meets the specifications set forth in this code.~~

~~(b) (c) Sampling procedures by others. Recipients of petroleum products who are required to take a sample as specified in sub. (2) (c) shall comply with the following sampling procedures.~~ 1. If the inspector does not, upon proper notice, after a reasonable length of time, take the sample as specified in sub. (2) (d), the recipient of the petroleum product may open the original container and take a representative sample of not less than 8 ounces of the contents. The sample shall be immediately placed in a clean container which is in compliance with s. Comm 48.590 (5) and (6) and which is then tightly closed.

~~1. The sample shall be taken in the presence of a disinterested person.~~

~~2. The petroleum sample shall be placed in a clean container which can be tightly closed.~~

~~3.~~ 2. The container holding the sample taken under subd. 1. shall be identified with all of the following information:

a. Means of conveyance ~~(i.e., such as from a pipeline, or tank car);~~

b. Type of original container;

c. Product name;

d. Content quantity.

~~4. Upon request, the sample taken shall be held for delivery to the inspector.~~ 3. The sample taken under this paragraph shall be held for delivery, upon demand, to the inspector. After the sample is taken, the petroleum product may be unloaded, sold, offered for sale or used the same as if sampled by the inspector. The sample shall be retained for 7 business days and then may be discarded.

SECTION 22. Comm 48.650 is created to read:

Comm 48.650 Reimbursement of product-analysis and investigation costs. (1)
OUTSIDE TESTING. An owner or seller of products which are subjected to a qualitative analysis that cannot be performed by department equipment and which are therefore sent to an outside testing source shall reimburse the department for the cost of the analysis and shipping, and pay any fee assessed under ch. Comm 2.

(2) MISCELLANEOUS INVESTIGATIONS. An owner or seller of a product shall pay the department any fees assessed under ch. Comm 2 for any of the following:

(a) Investigation of product-performance complaints.

(b) Investigation of products subject to mislabeling.

(c) Investigation of accidents or explosions, under s. Comm 48.100 (5).

(3) WAIVER. All reimbursements and fees under this section shall be waived if the analysis or investigation determines that the corresponding product complies with this code.

(4) DUE DATE. All reimbursements and fees that are due under this section shall be paid within 15 calendar days of billing.

(5) CONTINUATION OF SHUTDOWN. Failure to pay any reimbursements or fees under this section, for a petroleum storage tank system that has been shutdown under s. Comm 48.100 (7), shall result in a continuation of that shutdown.

SECTION 23. Comm 48.11 is renumbered Comm 48.700.

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after publication in the Wisconsin administrative register.

File reference: Comm 48/rules Comm 48f2